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Myers, 46 Id. 511; *Heald v. Casey*, 11 C. B. 993. But as the American law on the main principle involved in underground waters is in accord with the English, it may be inferred that the

decision in our principal case will meet with approbation and be followed in this country.

EDMUND H. BENNETT.

RECENT AMERICAN DECISIONS.

Court of Chancery of New Jersey.

BARTLES'S PETITION.

In 1849, a farm was given to an executor to pay the rents and profits thereof to testator's daughter for life, and the farm itself was given, after her decease, "to such person or persons as shall be her heir or heirs at law of land held by her in fee simple." Under the statute, the farm was sold in 1868, and the proceeds invested under the direction of the court. In 1880, the daughter released all her interest in the fund to her children, who thereupon petitioned for its payment to them. *Held*, that the will fixes the daughter's decease as the period for ascertaining who are her heirs, and her children now living, being only heirs apparent, are therefore not entitled to the fund.

ON petition by Theodore Bartles and others for payment to them of a trust fund under the control of this court.

RUNYON, Chancellor.—The petitioners are the children of Phoebe Ann Bartles. Her father, now deceased, by his will, proved in 1849, gave to his executor his homestead farm in Morris county during her life, in trust to rent it and receive the rents and profits and pay them over as he should receive them to her for her separate use, and to keep the property clear of all incumbrance by her or on her account, or by or on account of her then or any future husband, and he gave and devised the farm after her decease to "such person or persons as" should "be her heir or heirs at law of land held by her in fee simple." The farm was sold by order of this court in 1868, under the act to authorize the sale of land limited over to infants or in contingency (Rev. 1052), and the net proceeds of sale were paid into this court and invested under its direction according to the provisions of that act. Mrs. Bartles is still living, but has released her right and interest to and in the fund to the petitioners, who are all of her children, and they apply for the fund, on the ground that having extinguished her life estate, they are entitled to the money. That they are not so is entirely clear. The remainder in fee is given at the death of the life-tenant to "such person or persons as shall be her heir or

heirs at law of land held by her in fee-simple," that is, to those who by law would inherit the property at her death if she died intestate seised thereof in fee. Who those persons will be cannot now be determined. *Nemo est haeres viventis*. She has heirs apparent and presumptive now, but whether those persons will be her heirs at her death and so entitled to the remainder, cannot be told until that time arrives. The testator manifestly did not refer to any particular individual or individuals or class of existing persons by the language which he employed; but used the word "heir" in the technical sense, as is particularly evident from his use of the future tense, "such person or persons as shall be her heir or heirs at law," &c., that is, such person or persons as shall be her heir or heirs at law when she dies. The petition must be dismissed.

Under *nemo est haeres viventis*, a testamentary gift to the heirs of A., during A.'s lifetime, is void: 3 Greenl. Cruise * 106, § 317; 2 Jarm. on Wills * 13 *et seq.*; *Otis v. Prince*, 10 Gray 582; *Stith v. Barnes*, 1 Law Repos. (N.C.) 484; *Chessun v. Smith*, 2 Id. 392; *Norris v. Hensley*, 27 Cal. 439, 450; *Campbell v. Rowdon*, 18 N. Y. 412, 416.

But if A. be referred to in the will as a living person, a gift to his heirs is valid: *James v. Richardson*, 1 Ventr. 334; *Goodright v. White*, 2 W. Bl. 1010; *Winter v. Perratt*, 5 B. & C. 48; *Carne v. Roch*, 7 Bing. 226; *Darbison v. Beaumont*, 1 P. Wms. 229; *Vannorsdall v. Deventer*, 51 Barb. 137; *Heard v. Horton*, 1 Denio 165; *Cushman v. Horton*, 59 N. Y. 149; *Cosbey v. Lee*, 2 Disn. 460; *Jourdan v. Green*, 1 Dev. Eq. 270; *Levitt v. Wood*, 17 Grant's Ch. 414; *Knight v. Knight*, 3 Jones Eq. 167; *Simms v. Garrott*, 1 Dev. & Bat. Eq. 393; *Ward v. Stow*, 2 Dev. Eq. 509; *Stith v. Barnes*, 1 Law Repos. (N. C.) 484; or in case the term *heirs* is evidently used as *designatio personarum*: *Sams v. Garlick*, 14 M. & W. 698; *Baker v. Tucker*, 3 H. of L. Cas. 106; *Rittson v. Stordy*, 1 Jur. (N. S.) 771; *Lee v. Foard*, 1 Jones Eq. 125; *Wood v.*

McGuire, 15 Ga. 202; *Jamison v. Hay*, 46 Mo. 546; *Bowers v. Porter*, 4 Pick. 198; *Johnson v. Whiton*, 118 Mass. 340; *Morton v. Barrett*, 22 Mo. 257; *Williamson v. Williamson*, 18 B. Mon. 370; *Rapp v. Matthias*, 35 Ind. 332; *Butler v. Heustis*, 68 Ill. 594; *Bailey v. Putterson*, 3 Rich. Eq. 156; *Caulk v. Fox*, 13 Fla. 148, 161; *Ware v. Richardson*, 3 Md. 505; *Roberts v. Ogbourne*, 37 Ala. 174; *Myers v. Anderson*, 1 Strobb. Eq. 344; so where the term *heirs* is qualified, as *heirs of the body*, *right heirs*, &c.: *Nightingale v. Nightingale*, 1 T. R. 630; *Sweet v. Herring*, 1 East 264; *Darbison v. Beaumont*, 3 Bro. P. C. 60; *Doe v. Lanning*, 2 Burr. 1100; *Tucker v. Adams*, 14 Ga. 548; *Sharman v. Jackson*, 30 Id. 224; *Tipton v. La Rose*, 27 Ind. 484; *Grout v. Townsend*, 2 Hill 554; *Bradford v. Howell*, 42 Ala. 422; *Lemacks v. Glover*, 1 Rich. Eq. 141. It cannot be shown by parol that, by a devise to a parent, who testator knows was dead, he intended the children of such parent to take: *Judy v. Williams*, 2 Ind. 449; *Cureton v. Massey*, 13 Rich. Eq. 104.

The grantee in a deed must be in existence and certain, therefore a grant to a dead man is void: *Hunter v. Watson*, 12 Cal. 363; *McCracken v. Beat*, 3 A.

K. Marsh. 208; *Galloway v. Finley*, 12 Pet. 264. See *Crozier v. Crozier*, 5 Irish Eq. 544; *Holden v. Smallbrooke*, Vaughn 199; *Jackson v. Collins*, 16 B. Mon. 221; or to a fictitious person: *Thomas v. Wyatt*, 25 Mo. 24; 31 Mo. 188; *Phelps v. Call*, 7 Ired. 262; *Muskingum Co. v. Ward*, 13 Ohio 120; *Smith v. Bridges*, Breese 21; *Wiseman v. McNulty*, 25 Cal. 230; or to one unborn: *Newson v. Thompson*, 2 Ired. 277; *Dupree v. Dupree*, Busb. Eq. 164; *Hall v. Thomas*, 3 Strobb. 101; *Hamilton v. Pitcher*, 53 Mo. 334; although in *Nelson v. Iverson*, 24 Ala. 9, the property in a share delivered by a father to his daughter to belong to her child, with which she was then pregnant, should it be a boy, was held to vest in such boy at his birth.

A grant to the heirs of a deceased person is good: *Shaw v. Loud*, 12 Mass. 447; *Boone v. Moore*, 14 Mo. 420; *Gearheart v. Tharp*, 9 B. Mon. 31; see *Sargent v. Simpson*, 8 Me. 148; *Duncan v. Harper*, 4 Rich. (N. S.) 84.

A deed to the heirs of a living person is, ordinarily, void: *Hall v. Leonard*, 1 Pick. 207; *Morris v. Stephens*, 46 Penn. St. 200; *Winslow v. Winslow*, 52 Ind. 8; *Newson v. Thompson*, 2 Ired. 277. Yet if apparent from the instrument, who are the beneficiaries intended may be shown: *Hogg v. Odom*, Dud. 185; *Martin v. Youngblood*, 8 Humph. 581; *Gearhart v. Tharp*, 9 B. Mon. 34; *Huss v. Stephens*, 51 Penn. St. 282; *Huss v. Morris*, 63 Id. 367; *Flint v. Steadman*, 36 Vt. 210; *Hickman v. Quinn*, 6 Yerg. 96; see, further, *Epperson v. Mills*, 19 Tex. 65; *Cole v. Lake Co.*, 54 N. H. 290; thus a deed to the joint-heirs of A. and B., the grantor's daughter and son-in-law, was held good as to the two children of A. and B. then living, but not as to any subsequently born: *Holman v. Fort*, 3 Strobb. Eq. 66.

A note payable to the heirs of a living person is valid: *Bacon v. Fitch*, 1 Root 181; *Lockwood v. Jesup*, 9 Conn. 272;

Cox v. Beltzhoover, 11 Mo. 142; but see *Bennington v. Dinsmore*, 2 Gill 348.

A deed to S. or his heirs is good: *Ready v. Kearsley*, 14 Mich. 215; *Hogan v. Page*, 2 Wall. 605; see *Carhart v. Miller*, 2 South. 573; or a bond payable to A. or B.: *White v. Hancock*, 2 C. B. 830; but not a promissory note: *Musselman v. Oakes*, 19 Ill. 81; *Blanchenhagen v. Blundell*, 2 B. & Ald. 417; *Osgood v. Pearsons*, 4 Gray 455; *National Insurance Co. v. Allen*, 116 Mass. 400; *Hayden v. Snell*, 9 Gray 365; *Willoughby v. Willoughby*, 5 N. H. 244.

In a conveyance to an unmarried woman and her children, she takes a life-estate with a remainder to her after-born children, if any: *Fales v. Currien*, 55 N. H. 392; *Frazer v. Supervisors*, 74 Ill. 282; see *Chesson v. Smith*, 2 Law Repos. (N. C.) 392.

If to a married woman and her children, those subsequently born do not take: *Ayton v. Ayton*, 1 Cox Ch. 327; *Stroman v. Rottenbury*, 4 Dessaus. 268; *Hogg v. Odom*, Dud. 185; *Grimes v. Or-rand*, 2 Heisk. 298; *Holeman v. Fort*, 3 Strobb. Eq. 66; *Kitchens v. Craig*, 1 Bail. 119; unless a contrary intent appear: *Lillard v. Ruckers*, 9 Yerg. 64; *Read v. Fite*, 8 Humph. 328; *Shepherd v. Nabors*, 6 Ala. 631; *Watts v. Clardy*, 2 Fla. 369; *Conklin v. Conklin*, 3 Sandf. Ch. 64; *Woodruff v. Woodruff*, 32 Ga. 358; *Houghton v. Kendall*, 7 Allen 72; *Forter v. Shreve*, 6 Bush 519; *Simms v. Garrot*, 1 Dev. & Bat. Eq. 393; *Bullock v. Bullock*, 2 Dev. Eq. 307; *Noe v. Miller*, 4 Stew. Eq. 324.

A life tenant's covenant indemnifying one against damage and loss by reason of suits by the covenantor's heirs, executors or administrators, was held not to include such covenantor's children: *Pearson v. Darrington*, 32 Ala. 227, 275.

A mere contingent interest is subject to legislation, affecting or destroying it, before it becomes vested: *Beall v. Bealls*, 8 Ga. 210; *Scott v. Key*, 11 La. Ann.

232; *Sleight v. Read*, 9 How. Pr. 278; *Aspden's Estate*, 2 Wall., Jr., 368; *Barnes v. Huson*, 60 Barb. 598; *Dixon v. Dixon*, 7 C. E. Green 91; *Marshall v. King*, 24 Miss. 85; *Hill v. Chambers*, 30 Mich. 432; *Price v. Taylor*, 28 Penn. St. 95; *McGunnigle v. McKee*, 77 Penn. St. 81; see, however, *Coleman v. Reed*, Carr. Walk. 258; *Sinclair v. Jackson*, 8 Cow. 543; *Gilpin v. Williams*, 25 Ohio St. 283; *Dunn v. Sargent*, 101 Mass. 336; *Shonk v. Brown*, 61 Penn. St. 20; *Van Tilburgh v. Hollinshead*, 1 McCart. 32.

An heir cannot convey his interest or expectancy in his ancestor's estate, before such ancestor's decease, or the happening of the contingency; *Sullings v. Richmond*, 5 Allen 187; *Jackson v. Bradford*, 4 Wend. 619; *Tooley v. Dibble*, 2 Hill (N. Y.) 641; *Whitney v. Rust*, 1 Gratt. 483; *Arrington v. Arrington*, 2 Law Repos. (N. C.) 253; *Dennett v. Dennett*, 40 N. H. 498; *Vance v. Vance*, 21 Me. 364; *Grogan v. Garrison*, 27 Ohio St. 50; *Striker v. Mott*, 2 Paige 387; *Ludewig's Case*, 3 Rob. (La.) 99; *Beard v. Griggs*, 1 A. K. Marsh. 26; *Boyn-ton v. Hubbard*, 7 Mass. 112; *Hall v. Chaffee*, 14 N. H. 215; *Blanchard v. Brooks*, 12 Pick. 47; *Barksdale v. Gamage*, 3 Rich. Eq. 271; *Brewer v. Baxter*, 41 Ga. 212; *Hart v. Gregg*, 32 Ohio St. 502; *Pelletreau v. Jackson*, 11 Wend. 110; *Robertson v. Wilson*, 38 N. H. 48; *Hall v. Nute*, Id. 422; *Edwards v. Varick*, 5 Denio 664; or mortgage it: *Bayler v. Commonwealth*, 40 Penn. St. 37; *Carleton v. Leighton*, 3 Meriv. 667; *Purcell v. Mather*, 35 Ala. 570; *Batty v. Lloyd*, 1 Vern. 141; *Cook v. Field*, 15 Q. B. 475; *John Street*, 19 Wend. 659; *Hamilton v. Pitcher*, 53 Mo. 334; *Bacon v. Bonham*, 12 C. E. Green 209.

As to *post obits*, see 1 Story Eq. Jur. §§ 342-348; *Lushington v. Waller*, 1 H. Bl. 94; *Spencer v. Janssen*, 2 Ves. Sr. 125; *Cooke v. Lamotte*, 15 Beav. 234.

Equity will, however, enforce an executory contract to convey such contingent

interest to third persons, provided it be fair and *bona fide*: *Hopson v. Trevor*, 1 Strange 533; *Phipson v. Turner*, 9 Sims. 245; *Hinde v. Blake*, 3 Beav. 234; *Westby v. Westby*, 2 Dr. & War. 502; *Ridgway v. Underwood*, 67 Ill. 419; *McLoughlin v. Maher*, 17 Hun 215; *Smallman's Estate*, Irish R. (8 Eq.) 249; *Cook v. Field*, 15 Q. B. 460; *Nesmith v. Dinsmore*, 17 N. H. 515; *Trull v. Eastman*, 3 Metc. 121; *Russ v. Alpaugh*, 118 Mass. 376; *Curtis v. Curtis*, 40 Me. 24; *McDonald v. McDonald*, 5 Jones Eq. 211; *Stover v. Eycleshimer*, 46 Barb. 84; 3 Keyes 620; especially if made to the ancestor: *Cox v. Belitha*, 2 P. Wms. 272; *Persse v. Persse*, 7 Cl. & Fin. 279; *Quarles v. Quarles*, 4 Mass. 680; *Jones v. Jones*, 46 Iowa 466; *Firestone v. Firestone*, 2 Ohio St. 415; *Needles v. Needles*, 7 Id. 432; *Fitzgerald v. Vestal*, 4 Sneed 258; *Parsons v. Ely*, 45 Ill. 232; *Havens v. Thompson*, 11 C. E. Green 383; or to another heir: *Wethered v. Wethered*, 2 Sim. 183; *Harwood v. Tooke*, Id. 192; *Hyde v. White*, 5 Id. 524; *Jeffers v. Lampson*, 10 Ohio St. 101; *Coates Street*, 2 Ash. 12; *Walker v. Walker*, 67 Penn. St. 185; *D'Wolf v. Gardiner*, 9 R. I. 145; *Milner v. Emans*, 19 N. Y. 384; *Lewis v. Madisons*, 1 Munf. 303; *Johnson v. Hubbell*, 2 Stock. 332; *Smith v. Axtell*, Saxt. 494; or with the ancestor's express consent: *Fitch v. Fitch*, 8 Pick. 480; *Jenkins v. Stetson*, 9 Allen 128. But equity does not always enforce such assignments: *Meek v. Kettlewells*, 1 Phila. R. 342; *Lowry v. Spear*, 7 Bush 451; and may impose terms: *Gwynne v. Heaton*, 1 Bro. C. C. 1; *Green v. Broyles*, 3 Humph. 167.

As to the mode of alienating such interest, see *Dorsey v. Smith*, 7 Har. & Johns. 345; *Bennett v. Marris*, 5 Rawle 9; *Lintner v. Snyder*, 15 Barb. 621; *Wilson v. Wilson*, 32 Id. 328; *Ackerman v. Vreeland*, 1 McCart. 23; *Faber v. Police*, 10 Rich. (N. S.) 376; *McElwee v. Wheeler*, Id. 392; *Roof v. Foun-*

tain, 20 Barb. 527; *McClure v. McClure*, 1 Phila. R. 117; *Hopper v. Demarest*, 1 Zab. 525.

A tenant by curtesy initiate may convey his interest in lands: *Reaume v. Chambers*, 22 Mo. 36; *Jackson v. Mancius*, 2 Wend. 357; *McCorry v. King*, 3 Humph. 267; *Evans v. Kingsberry*, 2 Rand. 120; *McClain v. Gregg*, 2 A. K. Marsh. 457. See *Oldham v. Henderson*, 5 Dana 254. Or, one who has "entered" a tract of land, before receiving his patent therefor: *Hayward v. Ormsbee*, 11 Wis. 3; *Harmer v. Morris*, 1 McLean 44; *Bledsoe v. Little*, 4 How. (Miss.) 13; *Lamb v. Kamm*, 1 Sawy. 238; *Carroll v. Norwood*, 4 H. & McH. 287; *Graham v. Henry*, 17 Tex. 164; *Cobb v. Stewart*, 4 Metc. (Ky.) 255. Or after an entry for condition broken: *Horner v. Chicago Railroad*, 38 Wis. 165; 2 *White & Tudor's Lead. Cas.* (4th ed.), 1609; *Southard v. Central Railroad Co.*, 2 Dutch. 13; *Rice v. Boston Railroad*, 12 Allen 141; *Boone v. Tipton*, 15 Ind. 270; *Underhill v. Saratoga Railroad Co.*, 20 Barb. 455.

An heir, whose title is abated by a stranger, cannot devise it before entry: *Hall v. Hall*, 3 Call. 488; 1 Jarm. on Wills (5th Am. ed.), 153. See *Watts v. Cole*, 2 Leigh 664; *Varick v. Jackson*, 2 Wend. 166; *Herrington v. Budd*, 5 Den. 321; *Leach v. Jay*, Law Rep., 6 Ch. Div. 496; 9 Id. 42. Nor one who has a mere possibility of reverter: *Deas v. Horry*, 2 Hill Ch. 248; *Miller v. McNair*, 11 Iowa 525. See *Fowler v. Griffin*, 3 Sandf. 385.

A possibility, coupled with an interest, is devisable or descendible: *Manners v. Manners*, Spen. 142; *Thornton v. Roberts*, 3 Stew. Eq. 476; *Kean v. Hoffecker*, 2 Harring. 103; *Thompson v. Hoop*, 6 Ohio St. 480; *Lewis v. Kemp*, 3 Iredell Eq. 233; *Pond v. Bergh*, 10 Paige 140, 153, and cases cited; *Davis v. Bawcum*, 10 Heisk. 406; *Woodgate v. Fleet*, 44 N. Y. 1; *Ingilby v. Amcotts*, 21 Beav. 585; *Moor v. Hawkins*,

2 Eden 342; *Austin v. Cambridgeport*, 21 Pick. 215; 4 Kent 512; *Winslow v. Goodwin*, 7 Metc. 363; *Smith v. Sweringen*, 26 Mo. 551; *McDonald v. McMullen*, 2 Mills 91; *McMeekin v. Brummet*, 2 Hill Ch. 638. See *Bigelow v. Willson*, 1 Pick. 493; *Grayson v. Sandford*, 12 La. Ann. 646. But not a bare possibility, as, if a conveyance be to A. and B., and the survivor A. has no interest to assign during B.'s lifetime: *Doe v. Tompkinson*, 2 M. & Sel. 165; *Jackson v. Waldron*, 13 Wend. 178; *O'Bierne's Case*, 1 Jon. & Lat. 352; *Decker v. Saltsman*, 1 Hun 421; 59 N. Y. 275. See *MacAdam v. Logan*, 3 Bro. C. C. 310; *Thomas v. Jones*, 1 DeG., J. & S. 63; *Miller v. Emans*, 19 N. Y. 384; *Wilson v. Wilson*, 32 Barb. 328.

No act of the life-tenant, or trustee of such life-tenant, can affect the rights of the remaindermen: *Putnam v. Gleason*, 99 Mass. 454; *Noble v. Andrews*, 37 Conn. 346; *Jackson v. Edwards*, 22 Wend. 498; *Hall v. Want*, Phil. (N.C.) 502; *Frazer v. Supervisors*, 74 Ill. 282; *Emison v. Whittlesey*, 55 Mo. 254; *Austin v. Rutland Railroad*, 45 Vt. 215; *Feltman v. Butts*, 8 Bush 115; *List v. Rodney*, 83 Penn. St. 483; *Hosmer v. Carter*, 68 Ill. 98; *Wilkins v. Kirkbride*, 12 C. E. Green 93; *Booraem v. Wells*, 4 Id. 87. See *Knight v. Weatherwax*, 7 Paige 182; *Baylor v. De Jarnette*, 13 Gratt. 152; *Stephens v. Evans*, 30 Ind. 39; *Hamilton v. Pitcher*, 53 Mo. 334; *Lewis v. Nelson*, 4 Mich. 630; *Garner v. Dowling*, 11 Heisk. 48; *Allen v. Allen*, 2 Tenn. Ch. 28; *Murrell v. Mathews*, 2 Bay 397.

But statutory proceedings authorizing courts to convey or release estates in expectancy, &c., are valid: *Beioley v. Carter*, Law Rep., 4 Ch. App. 230; *Basnett v. Moxon*, Law Rep., 20 Eq. 182; *Wills v. Slade*, 6 Ves. 498; *Gaskell v. Gaskell*, 6 Sim. 643; *Mead v. Mitchell*, 17 N. Y. 210; *Williman v. Holmes*, 4 Rich. Eq. 475; *Faulkner v. Davis*, 18

Gratt. 651; *Loyless v. Blackshear*, 43 Ga. 327; *Reinders v. Koppleman*, 68 Mo. 482; *Nutter v. Russell*, 3 Metc. (Ky.) 163; *Taylor v. Blake*, 109 Mass. 513; *Dodd's Case*, Phil. (N. C.) Eq. 97; *Mickle's Case*, 10 C. E. Green 53; *Chism v. Keith*, 1 Hun 589.

A contingent remainder cannot be seized on execution: *Allen v. Scurry*, 1 Yerg. 36; *Dargan v. Richardson*, Dud. 62; *Penn v. Spencer*, 17 Gratt. 85; *Watson v. Dodd*, 68 N. C. 528; *Jackson v. Middleton*, 52 Barb. 9; *Perkins v. Clack*, 3 Head 734; *Allstons v. Bank*, 2 Hill Ch. 242; *Baker v. Copenbarger*, 15 Ill. 103; *Ridgeway v. Underwood*, 67 Id. 430; *Striker v. Mott*, 28 N. Y. 82. See *Lockwood v. Nye*, 2 Swan 515; *Payn v. Beal*, 4 Denio 405; *Woodgate v. Fleet*, 44 N. Y. 1; *Sheridan v. House*, 4 Abb. Ap. 218; *Bolton v. Stretch*, 3 Stew. Eq. 536.

What contingent interests pass under an insolvent, or bankrupt assignment. See *Inkson's Trusts*, 21 Beav. 310; *Iverson v. Gassiot*, 27 Eng. Law & Eq. 483; *Duggan's Trusts*, Law Rep., 8 Eq. 697; *Mitchell v. Hughes*, 6 Bing. 689; *Burn v. Carvalho*, 1 Ad. & El. 883; *Gibbins v. Eyden*, Law Rep., 7 Eq. 371; *Higden v. Williamson*, 3 P. Wms. 131; *Mudge v. Rowan*, Law

Rep., 3 Exch. 185; *Blakemore's Case*, Law Rep., 5 Ch. Div. 372. *Davis's Case*, Mont. 297; *Naden's Case*, Law Rep., 9 Ch. 670; *Nimms v. Davis*, 7 Tex. 26; *Outcalt v. Van Winkle*, 1 Gr. Ch. 513; *Sandford v. Lackland*, 2 Dill. 6; *Krumbaar v. Burt*, 2 Wash. C. C. 406; *Kinzie v. Winston*, 56 Ill. 56; *Banks v. Ogden*, 2 Wall. 57; *Buller v. Merchants' Insurance Co.*, 8 Ala. 146; *Shay v. Sessaman*, 10 Penn. St. 432; *Moth v. Frome*, Amb. 394; *Vizard's Trusts*, Law Rep., 1 Eq. 667; 1 Ch. 588; *Lee v. Olding*, 2 Jur. (N. S.) 850; *Rash's Estate*, 2 Pars. 160; *Stuckert v. Harvey*, 1 Miles 247; *Shaw v. Steward*, 1 Ad. & E. 300.

Quere, as to a mere right to take advantage of a breach of the condition subsequent by entry, being leviable: *Leach v. Leach*, 10 Ind. 271; *Thomas v. Record*, 47 Me. 500.

For instances of assignments of expectancies, &c., under statutory provisions, see *Moore v. Little*, 40 Barb. 488; 41 N. Y. 66; *Sheridan v. House*, 4 Abb. Ct. of App., Dec. 218; *Stover v. Eycleshimer*, 3 Keyes 620; *Goodell v. Hibbard*, 32 Mich. 47; 4 Kent *512; *Turpin v. Turpin*, Wythe 22 (137); *Lawrence v. Bayard*, 7 Paige 70.

JOHN H. STEWART.

Court of Chancery of New Jersey.

WILLIAM A. CASPER, Ex'r., v. FRANK P. WALKER.

A testator gave to his daughter Amy his homestead farm, subject to an annuity to his widow, and then provided: "It is further my will that the said Amy R. Turner reside on the aforesaid farm after my decease, and take proper care of the same. In case they (I mean Amy R. Turner and her husband) should not see proper to move on the same, then I order my executor hereinafter named to sell the same farm at public vendue to the highest bidder." The testator died in 1869, and soon afterwards Amy and her husband moved on the farm and resided there for two years, and then leased it and moved elsewhere. They returned to the farm in the spring of 1880 and have resided there since. *Held*, that the estate of Amy in the farm was a fee-simple, and not defeasible by her non-residence thereon, and that the executor's power of sale of the farm was limited to Amy's not having moved there at all.